

14 February 2014

Water Law Review
Office of Living Victoria
PO Box 500
East Melbourne VIC 3002

Dear Sir/ Madam

Re: Water Bill Exposure Draft

I am writing on behalf of the River Basin Management Society to provide comments on the Water Bill Exposure Draft (the Exposure Draft).

The River Basin Management Society is a member based organisation comprising policy professionals, scientists, engineers, economists and practitioners from academia, not for profit organisations, government and private enterprise working in the field of catchment and waterway management. The RBMS has approximately 230 members with an average work experience of 10 years, creating a knowledge base of over 2,000 years. The objectives of the RBMS include:

- To provide a forum in Australia for interchange of multidisciplinary knowledge and skills in the field of river basin management.
- To recognise, declare, promote and disseminate advances in river basin management.
- To encourage the interchange of those engaged in river basin management within Australia and overseas.
- To provide independent professional comment when required on river basin management issues.

The scope, effectiveness and efficiency of legislation governing the management of Victoria's waterways and catchments are of particular interest to the RBMS. We welcome the opportunity to comment on the Exposure Draft. Based on our objectives and the collective experience of our members, the RBMS provides comments on the Exposure Draft in the following areas of importance to our members:

1. Timing and duration of the consultation period
2. Objects of Act
3. Core considerations
4. Resource assessments and the role of Panels and Advisory Committees
5. Assessment program
6. Licensing: activities on or next to a waterway
7. Licensing: forestry plantations
8. Licensing: unauthorised works on a waterway
9. Licensing: transfer of take and use licences
10. Next steps for the review

Timing and duration of the consultation period

The launch of the Exposure Draft was very close to the end-of-year shutdown (released 18 December 2013) and Public Forums in late January to early February had limited advertising with timing during business hours. This scenario was not conducive to achieving extensive representation from professionals working in the sector. Our society, and many of our members, were simply not aware that the Exposure Draft was released for comment until late January.

The timing and duration of this consultation has limited our ability to provide a thorough review. The RBMS recommends that future consultation periods are advertised earlier and more extensively and include direct notification to industry bodies like ours. The RBMS would welcome the opportunity for our Society to support and enhance subsequent consultation phases of the review - we run monthly reading groups and host bi-monthly seminars that could provide an avenue for future engagement.

Objects of Act

The RBMS welcomes the explicit acknowledgement of whole of water cycle management as an object of the Exposure Draft.

Core considerations

The Exposure Draft provides the 'core considerations' that decisions makers must have 'regard to' when making decisions under the Act (s5). Whilst this presents a number of areas for consideration; the Exposure Draft provides no guidance on the extent or standard of this consideration.

The RBMS believes that when making decisions, consideration should also be given to the "Best Available Science". The RBMS is not advocating that the 'core considerations' require decisions to be based on the best science possible (which can be cost both time and money – and could be inconsistent with s4(g)). Rather, the RBMS is advocating that decision making adopts a principle of "Best Available Science" and that this principle should be reflected in the 'core considerations'.

We recognise that difficulties can arise when "Best Available Science" is used in legislation¹. The RBMS recommends that the Act contains a provision requiring consideration of "Best Available Science" and that the practical implementation of this consideration can be informed by a guideline or Best Available Science framework that operates outside of the Act.

Resource assessments and the role of Panels and Advisory Committees

The RBMS welcomes the multi-step process to review whether there are problems with water resources and determine ways to manage them. How these Resource Assessments, Strategic Reviews and Targeted Reviews are undertaken is an important aspect of how well the Exposure Draft meets its objectives (s4).

The Exposure Draft requires the Minister to undertake regional Resource Assessments (as a first step), which will be done at least every 15 years, guided by an expert Panel and informed by an assessment of the health of a region's water resources. The second step will be a Strategic Review, which will be guided by an Advisory Committee of people representing affected interests. The role of the expert Panel and the Advisory Committee are critical in the regional Resource Assessments and Strategic Reviews process.

The RBMS identified an issue with the composition of the expert Panels / Advisory Committees. There is a strong requirement in the Exposure Draft for the Minister to appoint an expert Panel or an Advisory Committee (s23). Whilst the Exposure Draft ensures that a Panel "must" be appointed, there is little in the way of requirements about the make-up of the Panel or Advisory Committee in s779 and s780. For example, s29(2) and s779 (2) require that the makeup of expert Panels / Advisory Committee consists of "...members who have knowledge of, or experience in, the matters to be covered by the review and that all relevant interests are fairly represented on it".

¹ Ryder, D. S., Tomlinson, M., Gawne, B. and Likens, G. E. (2010) Defining and using 'best available science': a policy conundrum for the management of aquatic ecosystems. *Marine and Freshwater Research* 61(7) 821–828

The RBMS argues that the composition and makeup of expert Panels and Advisory Committee is critical, and that the makeup of these types of panels needs to be broad and include aquatic ecologists, water quality specialists, hydrologists, environmental groups, anglers as well as holders of water entitlements. Under the proposed provisions in s779 and s780 there is a significant risk that specific skills and expertise may be missed when expert Panels and Advisory Committees are formed. The RBMS recommends that the Act provides further definition of the composition of expert Panels and Advisory Committees, and includes a requirement for one or more members of the expert Panel / Advisory Committee to have specific skills in ecosystem function and/or ecosystem management.

The RBMS also identifies an issue of the independence of the expert Panel / Advisory Committee. We note that the Exposure Draft does not require the Minister to proceed with a Strategic Review after a regional Resource Assessment, even if the expert Panel recommends it - the Minister can refuse to proceed, provided public notice provides reasons for this. The RBMS believes that Strategic Reviews (undertaken for the purpose of planning for, or responding to, long term risks to the reliability of supply, or to the quality, of water for both environmental and consumptive uses in a region) will be critical in supporting successful long term water management in Victoria.

Accordingly, the RBMS recommends that the Minister should be required to conduct a Strategic Review if recommended by the expert Panel of the regional Resource Assessment. The RBMS also recommends that the Minister is provided with the discretion to proceed with a Strategic Review, even if the expert Panel of the regional Resource Assessment do not make this recommendation.

Assessment program

The RBMS welcomes the requirement that the Minister undertakes an assessment program of the state's water resources. Further, we welcome the scope of this assessment outlined in s15(1); specifically the requirements for assessment of:

- Surface water and groundwater (s15(1)(a))
- Use and re-use of water resources (s15(1)(b))
- Substitution of one water source for another (s15(1)(c))

Licensing: activities on or next to a waterway

The RBMS welcomes that permits previously issued under by-laws will be replaced with licences issued under the new Water Act by catchment management authorities and Melbourne Water.

Licensing: forestry plantations

The RBMS welcomes the explicit inclusion of controls to manage the water impact of new forest plantations. Specifically we support the requirement for new forest plantation to apply for a take and use licence or offset with approval from the relevant Authority.

Licensing: unauthorised works on a waterway

The RBMS welcomes the redesign of the offence provision relating to unauthorised works on a waterway, particularly the allowance of fines to be issued by catchment management authorities and Melbourne Water. To support this change, the RBMS recommends that:

- robust guidance be provided to these organisations to ensure a consistent approach across the state and,
- that catchment management authorities and Melbourne Water are adequately resourced to perform these functions.

Licensing: transfer of take and use licences

Our comments here relate to the use of the 'core considerations' when transferring Take and Use licenses. Section 149(1)(a) requires the Minister to have regard for the 'core considerations' when deciding whether to approve or refuse an application for a transfer of a Take and Use License. Section 149(4) allows this requirement to be relaxed when the duration of a transfer is for less than one water season. There does not appear to be anything limiting an applicant from applying for a water season transfer every water season in order to bypass any requirement for

the minister to give regard to the 'core considerations' (hence bypass any requirement for an assessment of the impact of the transfer on the waterway values).

The RBMS recommends that specific provisions are included to address this limit this ability to bypass the 'core considerations'.

Next steps for the review

We understand that following the close of the submission period, the Advisory Panel and the Minister for Water will consider comments made, and intend to finalise the Water Bill for introduction to Parliament in 2014. The RBMS supports an open and transparent approach to consideration of submissions, and welcomes the decision to publish all submissions on the internet for public access.

We recognise that meaningful consultation also requires acknowledgement of how public input influenced the ultimate decision. The RBMS recommends the production of a 'Community Feedback' report to provide an overview of the main themes from submissions and outline how legislation was amended to reflect feedback. We note that the [Community Feedback report for the Draft Victorian Waterway Management Strategy](#) can provide a well-developed recent example.

Again we congratulate the Victorian Government and the Office of Living Victoria on the development of the Exposure Draft.



Mark Stacey

Vice President - River Basin Management Society

Prepared on behalf of the River Basin Management Society and its members